IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1195 of 1984

WITH

CRIMINAL APPEAL NO. 98 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOTIBHAI MEGHRAJBHAI DESAI

Versus

DAHYABHAI NATHABHAI PARMAR

Appearance:

1. In both the appeals :-

MR KJ SHETHNA for Petitioner No. 1

MS BANNA S DUTTA for Respondent No. 1

MR HH PATEL, APP for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/01/2002

CAV JUDGEMENT

1. Both these appeals arise from the common judgment and order delivered by Addl. City Sessions Judge, Court No. 6, Ahmedabad on 10th July, 1984 in Criminal Appeal No. 41/1984 whereby the Ld. trial Judge has set aside order of conviction and sentence passed against respondent no. 1 for offence punishable u/S. 384 of the Indian Penal Code (for short 'IPC') and has also suspended the sentence imposed upon respondent no. 1 for committing offence u/S. 323 of the IPC by the Ld. Chief Metropolitan Magistrate, Ahmedabad dated 28th February, 1984 in Criminal Case No. 468/1982 and has granted benefit under the provisions of Probation of Offenders Act, 1958. Both these appeals are therefore, heard together and they are being disposed of by this common judgment.

2. The entire case of the prosecution is based on two different events which had taken place in quick succession on 20th December, 1981 in the city of Ahmedabad in Amraiwadi locality. Brief facts can be described as follows :-

2.1. One Joitaram Taljabhai on 20th December, 1981 had started on his bicycle for going to the site of his house, which was then under construction, at about 4.00 O'clock in the evening. It was Sunday. After inspecting the construction he started for going to his relative's place and at that time respondent no. 1 who was already standing there called him. Respondent no. 1 started interrogating Joitaram as to from where he was coming and where he intended to go and what occupation he was doing. While Joitaram was in the process of giving answers respondent no. 1 gave him 3 to 4 slaps. He also pointed finger at a lady sitting in rickshaw parked at some distance from there and told Joitaram that she was a prostitute and he then pressurized Joitaram that would he like to settle the matter there and then or would he prefer to go to police station. Joitaram, however, told him that he had not committed any offence and that he did not want to go to the police station. Respondent no. 1 again threatened Joitaram that if he did not settle the matter, he would have to pay a fine of Rs.1,000/- at the police station and not only that but he would loose his bicycle and he would have to suffer imprisonment for six months. Joitaram was, therefore, persuaded that he should pay money to respondent no. 2 and he would let him off. However, Joitaram had only Rs.5/- in his pocket at that time, therefore, respondent no. 1 asked him what

amount he would be able to pay to him. Joitaram told him that he had about Rs.200/- to Rs.250/at his home and that amount he would pay to him. Before allowing Joitaram to go home for bringing money, respondent no. 1 showed him Rampuri knife and threatened him that he should not talk to any one about the matter. He also asked Joitaram to lock his cycle and keep it near Bhaipura temple and he took Joitaram in rickshaw with him. When rickshaw reached near post office at some distance from the house of Joitaram, he was allowed to get down. Joitaram thereafter went home and brought about Rs.225/- with him. When he came outside the gate of Mangal park where his residence is situated, he found respondent no. 1 standing there, who caught his hand and made him sit in rickshaw. Thereafter rickshaw was taken to the place where his cycle was kept and on reaching the spot the rickshaw was stopped. Thereafter, respondent no.1 again took out the knife and showed it to Joitaram and threatened him that he should not talk about this to any one. He thereafter took money from Joitaram and gave him back the key of his cycle. He was thereafter allowed to go and rickshaw went on its way. Joitaram thereafter took his bicycle and went home and immediately lied down on the cot.

2.2. The second event which is a connecting link of the aforesaid incident, according to the prosecution, took place as under :-

The wife of Joitaram during his visit to home for collecting the money saw him in dazed condition and he looked very scared. She, therefore, asked him what had happened, but he did not give any answer and instead opened the cupboard with key and took money and went outside. Looking to the strange behaviour of her husband, she followed him. There was a distance of about 20 to 30 ft. between them. When the rickshaw started after Joitaram sat in it, she started running after the rickshaw shouting to stop it. The present complainant Motibhai Meghrajbhai who was standing on the road near water tank saw this lady running after rickshaw with a child in her hand and hence he thought that the lady was in deep trouble. He, therefore, immediately followed the rickshaw of respondent no. 1 in another rickshaw which was parked on the side of road. After chasing it for about half a kilometer, the complainant could intercept the rickshaw of respondent no. 1. After both the rickshaws were stopped the complainant asked respondent no. 1 that a lady was running after his rickshaw and, therefore, he should come with him and whatever problem that was with that lady (i.e. Champaben wife of

Joitaram), he should sort it out. According to the complainant, he had drawn two to three inferences to the effect that either the lady might have forgotten something in the rickshaw or that she might have some problem with the occupants of rickshaw i.e. respondent no. 1 and the lady sitting with him in rickshaw. Respondent no. 1, however, told him that whatever that was to be settled was already done with the husband of that lady and the complainant should not unnecessarily interfere in this matter. At that juncture the complainant insisted that either respondent no. 1 should go with him to the lady running after the rickshaw or he should go with him to the police station. The respondent no. 1 therefore got excited and he brought out the knife and threatened him that he was a police constable and if he entered into any controversy with him, the consequences would not be very pleasant. Respondent no. 1 thereafter forcibly pulled complainant into rickshaw by catching hold of his hand and instructed the driver to drive rickshaw ahead. When the rickshaw reached temple of Khodiyar Mata, the complainant asked rickshaw driver to stop the rickshaw, which he did and the complainant got down and he asked the persons on the road to persuade respondent no. 1 to go with him. However, respondent no. 1 again got angry and forcibly made sit complainant in rickshaw and also gave him fist and kick blows in the presence of 40 to 50 persons on the road and also threatened him that if the complainant uttered anything more, he would cause him injuries with knife.

2.3. After driving some distance the rickshaw was brought to Amraiwadi Police Station and while the complainant was getting down from the rickshaw respondent no. 1 brought out knife from his pocket and again showed it to the complainant. Complainant therefore felt that respondent no. 1 would create trouble for him and he would get support from all the policemen that were there in the police station. He, therefore, started running towards the place of one Champaben Bachubhai, who was already known to him, but he was apprehended by the police persons and brought to the police station. At the police station the complainant asked the police officers present there to take down his complaint, but after initial reluctance, on the arrival of the relatives of the complainant, a complaint was recorded and respondent no. 1 was kept in lock up. The complaint given by the complainant is at Exh.8.

2.4. In the meanwhile Joitaram was also called at the police station alongwith his wife and he also gave a complaint before the police which is at Exh. 11.

2.5. On the strength of these complaints investigation commenced and on the completion of the investigation so far the complaint of Joitaram was concerned, the Investigating Officer requested for grant of "A" summary by submitting necessary report wherein it was opined that though the fact of extorting a sum of Rs.225/- appeared to be true, the identity of the culprit was not established. So far the complaint dated 20th December, 1981 of the present complainant is concerned, the Investigating Officer after completion of the investigation submitted an application dated 6/3/1982 requesting for grant of "B" summary. Thus, according to the complainant, when the police had not taken any effective steps against the culprit he had approached the Court of the Ld. Magistrate by filing a private complaint dated 8th April, 1982 against present respondent no. 1 for offences u/Ss. 323, 341, 342, 357, 504 and 506(2) of the IPC and u/S. 135(1) of the Bombay Police Act.

3. On 12th April, 1982 the Ld. Chief Metropolitan Magistrate, Ahmedabad in whose court the aforesaid complaint came to be filed, ordered to issue summons against respondent no. 1 for offences u/Ss. 323, 341 and 506 (1) of the IPC and trial also commenced for these offences after recording the plea of respondent no. 1 who denied his guilt and claimed to be tried. In light of complaint of Joitaram the charge came to be amended and charge for offence u/S. 384 of the IPC came to be added and the witnesses were allowed to be further cross-examined by the defence.

4. At the trial the prosecution has examined following witnesses :-

1. Dr. Laxmanbhai L. Thakkar P.W.1 Exh.3
2. Dr. Subhashbhai Harilal Dave P.W.2 Exh.5
3. Motibhai Meghrajbhai P.W.3 Exh.7
4. Champaben Joitaram P.W.4 Exh.29
5. Joitaram Taljabhai P.W.5 Exh.10
6. Naranbhai Bhagwandas P.W.6 Exh. 12 and
7. Ramajibhai Maganbhai Rathod P.W.7 Exh.13.

Over and above this, the prosecution has also relied on the following documentary evidence :-

1. Complaint of Joitaram Taljabhai Exh.1
2. Complaint of Motibhai Meghrajbhai given before the police on 20/12/1982 at Exh.8
3. Complaint of Joitaram Taljabhai Exh.14 and

4. Medical certificates for the injuries sustained by Motibhai at Exhs. 4 and 6, etc.

5. That at the conclusion of recording of the evidence, the respondent no.1's further statement was recorded u/S. 313 for enabling him to submit his explanation in response to the circumstances appearing against him in the evidence of the prosecution witnesses. In his defence he has stated that the case of the prosecution was false and that he had not committed any offence and the respondent no. 1 in his defence has cooked up a case against him.

6. That at the end of the trial the Ld. Magistrate convicted respondent no. 1 for offence u/S. 323 of the IPC and sentenced him to suffer RI for one month and to pay fine of Rs.200/-, in default to suffer further RI for 15 days. He also convicted the respondent no. 1 for offence u/S. 384 of the IPC and sentenced him to suffer RI for one year and to pay fine of Rs.500/-, in default further RI for three months. Respondent no. 1 was, however, acquitted with all the other offences with which he was charged.

6.1. The judgment and order of conviction and sentence passed by the Ld. Chief Metropolitan Magistrate dated 28th February, 1984 came to be challenged by respondent no. 1 in the Court of City Sessions Judge at Ahmedabad. The Addl. Sessions Judge, Court No.6 after hearing the appeal came to the conclusion that the prosecution has failed to prove offence u/S. 384 of the IPC against respondent no. 1 and hence the conviction recorded by the trial Court was erroneous. The Ld. Judge has also came to the conclusion that though the conviction recorded for offence u/S. 323 against respondent no. 1 by the trial Court was proper, he deserved grant of benefit under the Probation of Offenders Act. The Ld. Judge therefore, vide his judgment and order passed in Criminal Appeal No. 41/1984 set aside the conviction of respondent no. 1 u/S. 384 of the IPC and gave benefit of Probation of Offenders Act for offence u/S. 323 of the IPC to respondent no. 1.

7. The original complainant Motibhai Meghrajbhai Desai has therefore, approached this Court by challenging the judgment and order of acquittal passed in respect of offence u/S. 384 in Criminal Appeal No. 98/1986, whereas he has filed Criminal Appeal No. 1195/1985 for enhancement of imposition of substantive sentence for offence u/S. 323 of the IPC.

8. Mr. K.J. Shethna, learned counsel for the appellant in both these appeals, has submitted that the judgment and order of acquittal passed by the lower appellate Court are erroneous so far offence u/S. 384 of the IPC is concerned and further that looking to the facts and circumstances of the case, the said Court ought to have retained the order of sentence passed by the Ld. trial Court in respect of offence u/S. 323 of the IPC. He has further submitted that the prosecution has been successful enough to establish guilt of the case in respect of offence u/S. 384 and 323 of the IPC beyond reasonable doubt and, therefore, the lower appellate Court had committed grave error in disturbing the judgment and order of conviction and sentence passed by the Ld. Chief Metropolitan Magistrate. He has also submitted that the evidence of P.W. 3 Motibhai Meghrajbhai, P.W.4 Chmapaben Joitaram and P.W. 5 Joitaram Taljabhai clearly shows that respondent no. 1 on the day of incident had extorted an amount of Rs.225/from Joitaram and he had thereafter assaulted appellant Motibhai Meghrajbhai and caused him injuries. He has further submitted that looking to the fact that respondent no. 1 is supposed to protect the citizens of the State and he has instead made them as victims, hence he deserves no sympathy and he ought to be given substantive sentence of imprisonment for offence u/S. 323 of the IPC.

9. As against that, Mr. H.H. Patel, Ld. APP for the State and Ms. Banna Datta, Ld. counsel for respondent no. 1 have supported the judgment of the Ld. Addl. City Sessions Judge on the ground that considering the facts and circumstances appearing on record of the case, the same is proper and legal and requires no interference by this Hon'ble Court.

10. To appreciate the rival contentions, I must carefully scrutinise first the oral evidence and deal with the witnesses whose evidence has been mainly relied on by the prosecution for establishing its case. Motibhai Meghrajbhi P.W.3 Exh. 7 is the complainant of this case. He has stated that he was serving as Clerk in the office of the Director of Ayurved, Civil Hospital and he was staying near Amraiwadi Post office. According to him on 20/12/1981 he was standing near the water tank situated near his house, at that time he saw one rickshaw passing on the road. The said rickshaw was being followed by one lady who was running after it and was shouting to stop the rickshaw. She was also holding a child in her hand at that time. On hearing the shouts people got collected and an attempt by some one from the

crowd to stop the rickshaw was made, but it did not stop. This witness, therefore, boarded another rickshaw and followed the first rickshaw. After chasing it upto some distance, he intercepted the first rickshaw near public lavatory. He saw two persons - one lady and one man sitting in the said rickshaw. He identified the accused sitting in the Court as the person who was sitting in rickshaw at the time of incident. He asked the male member whether the lady shouting and running behind the rickshaw was his relative and if that be so he should clear up the things with her. He has further stated that on hearing this, the occupant of rickshaw got excited and he told the witness not to interfere in the matter. He also threatened the witness that he himself was a policeman and that if anything went wrong, he would take the complainant to the police station and lock him behind the bars. He also took out a Rampuri knife from his pocket and showed it to him (the complainant) and then asked him (the complainant) to go with him to the police station. Thereafter he (the complainant) was forcibly made to sit in the rickshaw and the driver was instructed to drive it ahead. This witness has further stated that when they reached the temple of Khodiyar Mata he asked rickshaw driver to stop it and he got down and he requested the members of the public gathered there to persuade the person sitting in the rickshaw to sort out the things with the lady. He further stated that at that time in front of the members of the public respondent no. 1 gave him fist blow on his right side hand. According to the witness he was thereafter dragged inside the rickshaw and rickshaw driver was asked to start the same. In the rickshaw also this witness was beaten and was threatened by show of knife and he was asked to keep total mum. When they reached Amraiwadi Police Station, the witness thought that respondent no. 1 was an associate of the police and, therefore, he would be beaten by the police persons. The witness, therefore, started running towards the house of his acquaintance but he was immediately apprehended by respondent no. 1 and other police persons. He was thereafter taken to Amraiwadi Police Station and was made to sit. According to this witness, when he tried to persuade the police officer to record his complaint, he started abusing him and refused to do so. Respondent no. 1 and the lady accompanying him were asked to sit in a room and they were served with tea. He has further stated that when his relatives came to know about the incident, they came to the police station and after being persuaded by them, the police officer recorded his complaint. The officer also confined respondent no. 1 in the lock up. Since he was beaten a Yadi was given to enable him to get the

treatment in the hospital and accordingly he went to L.G. Hospital and got himself treated. He was also advised to go to Nagari Hospital for getting his eye treated. When they returned to Amraiwadi Police Station, he saw that respondent no. 1 was already released and his complaint against the witness was recorded. He has further stated that Police Officer Mr. Parmar present there threatened him that since he had given complaint against the policeman, he would have to suffer for it. This witness was thereafter arrested and he was released on bail by the Court on the next day. The witness has further stated that his complaint was never read out to him and only his signature was obtained. Since the police did not inform him about what action had been taken on the complaint of this witness, he was ultimately constrained to file complaint in the Court. In the cross-examination by the defence he has stated that when he saw one lady running after the rickshaw shouting to stop it, a crowd of about 50 persons got collected. He has also stated that before he started chasing the rickshaw of respondent no. 1 he did not have any talk with the lady who was shouting to stop the rickshaw. He has further stated that he did not ask the lady to accompany him and that after chasing rickshaw of respondent no. 1 upto a distance of about half a kilometer he could intercept it. He has further stated that he did not ask anything to the driver of the rickshaw occupied by respondent no. 1 nor did he ask anything to the lady who accompanied respondent no. 1. He has further stated that the husband of the distressed lady was sitting in the rickshaw and respondent no. 1 told the witness that he had already explained the things to the husband of that lady. He has further stated that when respondent no. 1 took out his knife when he first sat in the rickshaw of respondent no. 1, no body tried to intervene and he also did not try to run away and he again sat in the rickshaw as respondent no. 1 told him to go with him to the police station. He has further stated that when the rickshaw again stopped near the Hatkesh temple, he got down from it and started explaining the things to a crowd of about 30 to 40 persons which had already collected there. He has stated that he did not know Champaben i.e. lady running after the rickshaw and her husband. However, he came to know name of Champaben within half an hour on that very day. He has denied the suggestion of the defence that he was a head strong person and that he had tried to extort money from respondent no. 1 at the point of knife. This witness was again cross-examined on 13/9/1983 after amendment of the charge and in the said cross-examination he has stated that when he lodged private complaint in the Court on 8/4/1982 he had not

talked about the alleged extortion of money by respondent no. 1 from Joitaram. However, he also states that he had come to know on the day of incident at the police station that respondent no. 1 had extorted money from Joitaram. When this witness was asked that why he has not stated the fact regarding extortion of money in his own complaint, he has replied that since the matter did not pertain to him, he had not stated the same in his complaint. The prosecution has got his complaint recorded by the police on 20th December, 1981 on record at Exh. 8.

10.1. The second witness examined by prosecution is Champaben Joitaram P.W. 4 Exh.9. She has stated in her evidence that on the day of incident her husband had gone to see their house under construction. When he returned within 15 minutes, he opened the cupboard and took out money. She therefore asked where he wanted to take money, but he did not give any reply. She saw that his face was swollen and eyes were red and it appeared that some body had beaten him. She has further stated that after taking out the money he immediately ran out of the house and, therefore, she got suspicious and she also followed him immediately carrying her child with her. She saw one rickshaw parked near the post office and she also saw respondent no. 1 standing there. She, therefore, called her husband but he did not stop. She further saw that respondent no. 1 caught hold of her husband's hands and after making him run some distance he made him sit in the rickshaw and the rickshaw was then driven at a speed. She ran after rickshaw at some distance but she could not reach it and she came back home. However, before that she saw that one person appearing to be of Rabari community following the rickshaw. After she returned her husband came within short time and he lied down on the cot without speaking anything to her. At night they went to L.G. Hospital. She has further stated that when they went to police station for lodging the complaint, they were driven out by the police. On the following day of the incident at about 10 O'clock Police Officer Mr. Rathod recorded their statements. In the cross-examination she has stated that she tried very hard to stop her husband but he did not stop. She has also stated that respondent no. 1 was standing at some distance from rickshaw and there was no bicycle lying there. In the later part of the cross-examination she has stated that her husband did not sit in the rickshaw but he was running. She has admitted that she knew the complainant because they were purchasing milk from him. She has also stated that she could not talked Motibhai i.e. complainant on that day.

Thereafter she had told Motibhai about the extortion of money by respondent no.1.

10.2. Joitaram Taljabhai P.W. 5 Exh.10 has stated that on 20/12/1981 he had gone to the site of his house under construction and from there he had started to go to his relatives and at that time he was called by respondent no. 1. Soon thereafter respondent no. 1 pointed at a lady sitting in rickshaw at some distance from the place they were standing and told this witness that she was a prostitute and further told him that if he wished the matter can be settled there otherwise he would have to come to police station. The witness told respondent no. 1 that since he had not committed any offence there was no question of his going to the police station. However, according to this witness, respondent no. 1 told him that if the matter went to the police station not only he would have to pay fine of Rs.1,000/- but he will loose his bicycle as well as he will have to suffer imprisonment for six months and that it was desirable that he should pay money to him so that he would let him off. The witness has further stated that since he had only Rs.5/with him at that time, he told respondent no. 1 that he would go home and bring about Rs.200/- to Rs.250/- and thereupon respondent no. 1 told him that he should pay him Rs.225/-. He also showed him a Rampuri knife and warned him that he should not say anything about this to any one. He has further stated that he was asked to keep his cycle near Bhaipura temple and was asked to lock it and the key of the cycle was retained by respondent no.1. He also told the witness that he would return the key only if the money is paid. He was thereafter made to sit in the rickshaw which was taken upto the post office and it was stopped thereafter to enable the witness to get down. When he returned after getting the money respondent no. 1 caught his hand and made him to sit in rickshaw and the rickshaw was taken to the place where the cycle was kept and there he was allowed to get down. The witness has further stated that at that time respondent no. 1 threatened him by showing knife that he should not talk about this to any one. In the rickshaw respondent no. 1 took money and returned the key of the cycle to the witness. The witness has further stated that after he reached home he slept on the cot, but soon thereafter Mr. Rathod from police station came to call him and, therefore, they went to the police station, where respondent no. 1 was sitting. He has further stated that at the police station he informed Mr. Rathod that respondent no. 1 had forcibly collected money from him and thereupon Mr. Rathod told him that police would not indulge into such activity and

thereafter he was threatened by Mr. Rathod. When he went home he was not feeling well and, therefore, he went to L.G. Hospital and got the treatment. On the next day Mr. Rathod at about 10 to 11 O'clock recorded his complaint. In the cross-examination this witness has stated that he had never seen the respondent no. 1 before this incident. However, he had seen the complainant very often. He has stated that when respondent no. 1 first called him he immediately called the witness and showed him the lady and thereafter beat him. He, therefore, got scared and could not speak anything. He further admitted that he had not committed any offence but since he was threatened by respondent no. 1 he had settled the matter with him. He has further stated that since respondent no. 1 had threatened him, he did not tell anything about the threat given by respondent no. 1 to any one in the society. He also states that he did not want to go to lodge complaint because he was scared. He has further stated that he neither asked the name of respondent no. 1 nor requested respondent no. 1 to show his identity nor he not down the number of rickshaw. He has denied the suggestion that since a case was registered against the complainant with a view to help him, he was giving false evidence in the Court. In the further cross-examination he has stated that respondent no. 1 was standing on the footpath and there was hardly any movement on the road. He has further stated that when respondent no. 1 called him he was all alone on the road. He has further stated that when he was beaten by respondent no. 1 and threatened by him, he did not raise shouts. He has further stated that he did not know the complainant prior to the present incident, but they were purchasing milk from him and that fact he came to know only after the incident. He has further stated that when he gave money to respondent no. 1 he and respondent no. 1 were all alone.

10.3. Since the evidence of other witnesses is not very relevant for deciding these appeals, the same is not discussed here in detail.

11. Considering the evidence of these witnesses it appears that the prosecution's endeavor is to show that complainant Joitaram was accosted by respondent no. 1 and thereafter he was blackmailed with a view to extort money from him and thereafter he was taken to his residence for bringing money and after taking the money near Bhainath temple he was allowed to go from the rickshaw. It also appears that during the course of this happening wife of Joitaram followed him and ran after

rickshaw and as she could not reach the rickshaw boarded by respondent no.1, Motibhai chased rickshaw of respondent no. 1 in a rickshaw that was parked near the side of the road and intercepted it after going about half a kilometer distance. He was thereafter forcibly taken by respondent no. 1 in his own rickshaw and after beating him and threatening him he was taken to police station where his complaint was not recorded. However, if the evidence of all the three witnesses is minutely examined, it does not inspire much confidence. It is hard to believe that in a broad day light on the main road respondent no. 1 who is the policeman would venture to call Joitaram and would try to extort money from him by blackmailing him that he was associated with a lady who was prostitute. It is also hard to believe that on the road he would have openly beaten and no one come to is rescue. It is also difficult to believe that when he was allowed to go home he would not talk anything to his wife nor he would try to seek any help from the neighbour or members of the society, but he would take out the money and again go with respondent no. 1 and sat in his rickshaw and gave him money in exchange of the key of the cycle. It may be noted that the incident has taken place not far from his own locality and in such circumstances the natural behaviour of a person sought to be victimized in this way would be to raise shouts or for immediate help and expose the policeman and his companion. However, nothing of the sort has been done.

11.1 Even the evidence of Champaben wife of Joitaram does not inspire confidence. She has also not acted in a natural manner and has simply run after the rickshaw in which respondent no. 1 had made her husband to sit. She has categorically stated that she could not catch the rickshaw running ahead of her and she returned home, but in the meanwhile she had already seen the complainant chasing rickshaw of respondent no. 1. The witness does not say that she had made any attempt to find out from others as to actually what had happened. It also appears that she has not stated anything about the rickshaw having stopped near the temple with a view to enable her husband to get down there and to take the cycle. In fact her evidence shows that from the beginning she was running after the rickshaw and her husband was sitting inside the rickshaw and when she saw the present complainant chasing the rickshaw, she came back. The evidence of complainant Motibhai shows that when he heard the shouts of lady he immediately boarded another rickshaw and started following the rickshaw occupied by respondent no. 1. He also does not say that rickshaw was stopped near the temple and Joitaram was allowed to

get down to collect his cycle and go home. Further it could be seen from the evidence of Motibhai that the chase of rickshaw had lasted for some time i.e. after covering about half kilometer distance it was intercepted. If conjoint evidence of all the three witnesses is read, it shows great variance between their respective version. The evidence of Champaben as well as Motibhai does not show that respondent no. 1 had made Joitaram to sit inside the rickshaw after he got money from home and he was allowed to go near the temple where his cycle was parked. This fact is only stated by Joitaram alone. Neither Champaben nor Motibhai speaks anything about the rickshaw being stopped near the temple. If that be so, the evidence of all the three witnesses is not at all consistent and it creates a great doubt about its truthfulness. Further if the evidence of complainant is also seen in isolation, it does not inspire confidence in as much as it is full of improbabilities. The complainant would not be beaten in the presence of about 40 to 50 persons and that he would not be forcibly made to sit in the rickshaw despite his protest. Moreover, near Hatkesh temple he would not be allowed to stop the rickshaw and allowed to get down with a view to address a crowd of about 30 to 40 persons. It would also be noted that he would not be beaten by the police in the presence of so many persons, more particularly so when he had tried to apprehend culprit. According to this witness, even when he intercepted rickshaw of respondent no. 1, husband of Champaben i.e. Joitaram was found present in the rickshaw of respondent no.1. One does not know how that could happen because it is the case of prosecution and also the version of Joitaram that he had got down near the temple and after returning of the key he had gone back home. This shows the grave discrepancy in the prosecution evidence and the story put forward by it cannot be accepted. It is also matter to be noted that though complainant was known to Joitaram and his wife, he came to know about the complainant only after the complaint was filed by him in the Court on 8th April, 1982. The entire evidence of these three witnesses also creates a great suspicion in the mind of the Court that initially it appears that either Joitaram or Motibhai was involved in some crime and with a view to avoid involvement in such crime they had cooked up the entire story and all throughout they have pretended that both were not known to each other. Be that as it may. In light of such fishy evidence it would not be safe to rely on it and disturb the order of acquittal. Sitting in appeal my jurisdiction is limited to disturb the order of acquittal passed by the lower Court if I find that the same is not perverse or against

the evidence on record of the case. On the contrary, I find that the order dismissing the appeal passed by the Sessions Court is completely just and proper and it does not require any interference from this Court and this appeal therefore deserves to be dismissed.

12. So far offence u/S. 323 of the IPC is concerned, the Ld. Judge has found it to be true, but instead of allowing the substantive sentence to remain he has granted benefit under the provisions of Probation of Offenders Act to respondent no.1. After a lapse of about 18 years of the incident it would not be proper for me to alter the discretion exercised by the lower Court if I find that the same is not perverse and against the record of the case. The said appeal has, therefore, no merit and it is also required to be dismissed.

13. In the result, both these appeals are dismissed. Muddamal articles, if any, be disposed of in accordance with direction given by the trial Court.

[AKSHAY H. MEHTA, J.]

* Pansala.